

## Message Text

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ORIGIN EA-12

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FM SECSTATE WASHDC  
TO AMEMBASSY CANBERRA

C O N F I D E N T I A L STATE 097543

E.O. 11652: GDS

TAGS: EINV

SUBJECT: DILLINGHAM CASE

REF: A. STATE 074672, B. CANBERRA 1498

1. IN MEETINGS BETWEEN DEPARTMENT OFFICIALS AND DILLINGHAM VICE PRESIDENT CARTER, DEPARTMENT AGREED TO PROVIDE VICE PRESIDENT MONDALE WITH BRIEFING MATERIAL ON DILLINGHAM. DEPARTMENT DOES NOT KNOW IF VICE PRESIDENT INTENDS TO RAISE ISSUE. IF HE DOES, WE BELIEVE BEST WAY WOULD BE INFORMAL REFERENCE TO PREVIOUSLY MADE RECOMMENDATIONS ON WAYS TO RESOLVE DISPUTE.

2. DEPARTMENT HAS TAKEN NOTE OF AMBASSADOR'S RECOMMENDATION, PARA 5, REFTEL B, AND SHARES HIS CONCERN ABOUT EFFECT OF DILLINGHAM ON OTHER ASPECTS OF US-AUSTRALIAN RELATIONS.  
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HOWEVER, FACTS OF CASE AS KNOWN TO DEPARTMENT AND PREVIOUSLY COMMUNICATED TO EMBASSY SUPPORT VIEW THAT GOA HAS OBLIGATION UNDER INTERNATIONAL LAW TO COMPENSATE DILLINGHAM. ALSO, USG HAS AN OBLIGATION TO PROTECT RIGHTS OF ITS CITIZENS, PRIVATE AND CORPORATE, OVERSEAS. IT WOULD BE PARTICULARLY UNFORTUNATE PRECEDENT IF FAIR TREATMENT OF US FOREIGN INVESTMENT IS DENIED BY A FRIENDLY

INDUSTRIALIZED COUNTRY WHICH SHARES OUR GENERAL VIEW OF THE RIGHT TO COMPENSATION UNDER INTERNATIONAL LAW.

3. GIVEN FACTORS CITED ABOVE, AND OTHERS, EMBASSY IS REQUESTED TO CONVEY FOLLOWING TO GOA BY MEANS OF AN AIDE MEMOIRE AT THE APPROPRIATE LEVEL.

-- USG CONTINUES TO BE CONCERNED ABOUT THE DISPUTE BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE DILLINGHAM CORPORATION. AS GOA KNOWS, WE BELIEVE THAT COMPENSATION IS DUE DILLINGHAM UNDER INTERNATIONAL LAW.

-- THE GOA WILL RECALL THAT THE US HAS DISCUSSED THE DILLINGHAM CASE WITH IT AT VARIOUS LEVELS DURING THE PAST YEAR. USG POSITION HAS BEEN, AND REMAINS, THAT OUR GOVERNMENTS CONTINUE TO HAVE A MUTUAL INTEREST IN SEEING THE CASE RESOLVED IN AN AMICABLE MANNER, BOTH BECAUSE OF THE SIMILAR VIEWS WE HOLD REGARDING INTERNATIONAL INVESTMENT AND OUR LONG HISTORY OF FRIENDSHIP AND COOPERATION.

-- THE USG GREATLY APPRECIATES FACT THAT DEPUTY PRIME MINISTER ANTHONY MET WITH DILLINGHAM REPRESENTATIVES ON FEBRUARY 28.

-- THE USG IN OCTOBER SUGGESTED THE DISPUTE MIGHT BE RESOLVED AMICABLY THROUGH INVOLVEMENT OF A THIRD PARTY.  
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THE COMPANY HAS INDICATED THAT IT WOULD BE WILLING TO PURSUE ITS CLAIM FOR COMPENSATION IN A NUMBER OF WAYS AND ACCEPT THE RESULT OF ANY DECISION REACHED BY THESE METHODS. THESE INCLUDE:

A. MEDIATION BY A MUTUALLY AGREED THIRD PARTY TO BE APPOINTED BY THE PRIME MINISTER.

B. AGREEMENT BY THE AUSTRALIAN GOVERNMENT TO A LAWSUIT IN THE AUSTRALIAN COURTS TO DECIDE THE AMOUNT OF COMPENSATION DUE TO THE COMPANY, PROVIDED GOA AGREES THAT THAT IT IS LIABLE FOR SOME AMOUNT.

C. UTILIZATION OF INTERNATIONAL ARBITRATION.

-- WE BELIEVE ANY OF THESE METHODS WOULD BE AN APPROPRIATE MEANS OF RESOLVING THE OUTSTANDING DIFFERENCES BETWEEN THE AUSTRALIAN GOVERNMENT AND DILLINGHAM, AND WE ARE CONSIDERING A FORMAL PROPOSAL BASED ON ONE OR MORE OF THEM. WE HOPE THE AUSTRALIAN GOVERNMENT WILL GIVE SERIOUS AND FAVORABLE CONSIDERATION TO THESE ALTERNATIVES.

4. FYI. DEPARTMENT HAS RECEIVED MESSAGE FROM AMBASSADOR ALAN WOLFF, DEPUTY STR, REPORTING ON HIS RECENT MEETING WITH DILLINGHAM REPRESENTATIVES. PURPOSE OF THEIR VISIT

WAS TO INQUIRE ABOUT USE OF SECTION 301 OF THE TRADE ACT AS A WAY TO ENCOURAGE THE GOA TO MAKE EQUITABLE SETTLEMENT. SECTION 301 IS ADMINISTERED BY STR AND PROVIDES THAT PRESIDENT MAY TAKE CERTAIN ACTIONS IF HE DETERMINES THAT A FOREIGN COUNTRY IS ENGAGING IN ACTS OR PRACTICES WHICH BURDEN OR RESTRICT US COMMERCE. PRESIDENT HAS AUTHORITY TO SUSPEND, WITHDRAW OR PREVENT THE APPLICATION OF TRADE AGREEMENTS OR TO IMPOSE DUTIES OR OTHER IMPORT RESTRICTIONS ON THE PRODUCTS OR SERVICES OF THE OFFENDING COUNTRY. PROCEDURE FOR INVOKING SECTION 301  
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301 IS FOR COMPANY TO FILE COMPLAINT WITH STR TO BE FOLLOWED BY PUBLIC HEARINGS. WHILE DEPARTMENT IS NOT AWARE THAT SECTION 301 HAS BEEN PREVIOUSLY INVOKED IN CASE OF AN INVESTMENT (AS OPPOSED TO TRADE) DISPUTE, STR HAS VIRTUALLY NO FLEXIBILITY ONCE COMPLAINT IS FILED IN ITS PROCEDURAL REQUIREMENTS OF PUBLISHING COMPLAINT AND REPORTING TO THE CONGRESS ON THE PROGRESS MADE ON THE ISSUE.  
CHRISTOPHER

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NNN

## Message Attributes

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